

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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METCALFE, INC.,

Plaintiff,

vs.

Case No. 16-CV-854

FESTMARK, INC., d/b/a FESTIVAL FOODS,

Defendant.

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**ANSWER**

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Defendant Festmark, Inc., by its attorneys Foley & Lardner LLP, answers the Complaint of Plaintiff Metcalfe, Inc. as set forth below.

**NATURE AND STATUTORY BASIS FOR ACTION**

1. Festmark admits that Metcalfe owns and operates retail grocery stores in Madison, Wisconsin and Wauwatosa, Wisconsin. Festmark denies that Metcalfe owns the Road Sign Marks. Festmark lacks sufficient information to form a belief about the truth of the remaining allegations in paragraph 1 and therefore denies those allegations.

2. Festmark denies that it does business throughout Wisconsin, denies that it owns or operates a Festival Foods grocery store in Madison, Wisconsin, and denies that it is a proper defendant in this action. Festmark states that it owns and operates a retail grocery store under the name Festival Foods in Onalaska, Wisconsin. Festmark admits that it uses a trademark that includes the phrase FESTIVAL FOODS LOCALLY GROWN with an accompanying road sign to promote locally grown produce at its store. Festmark denies any remaining allegations in paragraph 2.

3. Festmark admits that Metcalfe is bringing the causes of action identified in paragraph 3. Festmark denies Metcalfe is entitled to any relief for those causes of action.

### **THE PARTIES**

4. Festmark lacks sufficient information to form a belief about the truth of the allegations in the first sentence of paragraph 4 and therefore denies those allegations. Festmark incorporates by reference its answer to paragraph 1 above in response to the second sentence in paragraph 4.

5. Festmark admits that it is a Wisconsin corporation. Festmark denies that it is located at the address identified in paragraph 5 of the complaint. Festmark incorporates its answer to paragraph 2 in response to the allegations in the second sentence of paragraph 5.

### **JURISDICTION AND VENUE**

6. Festmark states that paragraph 6 alleges legal conclusions to which no response is required. Festmark denies any factual allegations in paragraph 6.

7. For purposes of this action, Festmark does not contest that this Court has personal jurisdiction over Festmark. Festmark denies that it is a proper defendant in this action.

8. For purposes of this action, Festmark does not contest that venue is proper in this jurisdiction. Festmark denies that it is a proper defendant in this action.

### **BACKGROUND**

9. Festmark lacks sufficient information to form a belief about the truth of the allegations in paragraph 9 and therefore denies those allegations.

10. Festmark denies the allegations in paragraph 10.

11. Festmark admits that it uses the Festival Food Mark in connection with its retail grocery store services. Festmark denies that Metcalfe began using the Road Sign Marks

in Wisconsin prior to the first use in Wisconsin of the Festival Foods Mark by Festmark and denies the remaining allegations in paragraph 11.

12. Festmark denies the allegations in paragraph 12.

13. Festmark denies the allegations in paragraph 13.

14. Festmark denies the allegations in paragraph 14.

15. Festmark denies the allegations in paragraph 15.

16. Festmark denies the allegations in paragraph 16.

17. Festmark denies the allegations in paragraph 17. Festmark further states that Metcalfe fails to state a claim for dilution, because dilution applies only to famous marks.

18. Festmark denies the allegations in paragraph 18.

**COUNT ONE**  
**FEDERAL TRADEMARK INFRINGEMENT**

19. Festmark incorporates by reference its answers to paragraphs 1 through 18 as if fully restated here.

20. Festmark denies the allegations in paragraph 20.

21. Festmark denies the allegations in paragraph 21.

22. Festmark denies the allegations in paragraph 22.

23. Festmark denies the allegations in paragraph 23.

24. Festmark denies the allegations in paragraph 24.

**COUNT TWO**  
**FALSE DESIGNATION OF ORIGIN**

25. Festmark incorporates by reference its answers to paragraphs 1 through 24 as if fully restated here.

26. Festmark denies the allegations in paragraph 26.

- 27. Festmark denies the allegations in paragraph 27.
- 28. Festmark denies the allegations in paragraph 28.
- 29. Festmark denies the allegations in paragraph 29.
- 30. Festmark denies the allegations in paragraph 30.

**COUNT THREE**  
**UNFAIR COMPETITION**

31. Festmark incorporates by reference its answers to paragraphs 1 through 30 as if fully restated here.

- 32. Festmark denies the allegations in paragraph 32.
- 33. Festmark denies the allegations in paragraph 33.
- 34. Festmark denies the allegations in paragraph 34.
- 35. Festmark denies the allegations in paragraph 35.
- 36. Festmark denies the allegations in paragraph 36.

**COUNT FOUR**  
**COMMON LAW TRADEMARK INFRINGEMENT**  
**AND UNFAIR COMPETITION**

37. Festmark incorporates by reference its answers to paragraphs 1 through 36 as if fully restated here.

- 38. Festmark denies the allegations in paragraph 38.
- 39. Festmark denies the allegations in paragraph 39.
- 40. Festmark denies the allegations in paragraph 40.
- 41. Festmark denies the allegations in paragraph 41.

**AFFIRMATIVE DEFENSES AND OTHER DEFENSES**

- 1. Metcalfe has failed to state a claim for which relief can be granted.
- 2. Metcalfe has failed to name the proper defendant.

3. Metcalfe has failed join a necessary party.

**WHEREFORE**, Festmark demands that all of Metcalfe's claims be dismissed with prejudice, judgment be entered in favor of Festmark, and Festmark be awarded its attorney fees and costs as permitted by law.

Dated: January 13, 2017

Respectfully submitted,

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